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Date of decision: 19/12/95

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GAJANAND BABURAO DALVI vs STATE OF GUJARAT

Appearance: MR PB MAJMUDAR for Petitioner Ms.S.K.Mandavia for Respondent No. 1 SERVED for Respondent No. 2, 3

Coram : MR.JUSTICE S.K.KESHOTE

ORAL JUDGEMENT

The petitioner who is holding a class-iv post in the

office of the Director of Health & Medical Services(Medical) approached this Court by way of this writ petition under article 226 of the Constitution of India. The petitioner has prayed in this writ petition that the respondents be directed to give to the petitioner the benefits of seniority on his transfer to Surat It has been further prayed that the order of his transfer to Surat without protection of his seniority be quashed and set aside. Certain other prayers have also been made which are consequential to the first two prayers.

2. The facts relevant to the filing of the present petition are as under:

That the petitioner was appointed as chowkidar in the B.J.Medical College, Ahmedabad in the year 1957. Thereafter the petitioner was transferred from time to time at different places. In the year 1968 the petitioner was transferred from ESI hospital, Ahmedabad to Medical College, Surat. Due to his personal family difficulties and circumstances the petitioner made a request to Government in the year 1982 to transfer him from Surat to Ahmedabad. The petitioner has given out that if he is to be transferred at his own request to Ahmedabad then he has to sacrifice his entire seniority in the service. The petitioner was in a difficult situation and he has come to Ahmedabad even at the cost of sacrificing the seniority. On his posting at Ahmedabad accordingly his request was accepted and he was posted at Ahmedabad in the year 1982 at the Civil Hospital. The petitioner stated that when he was transferred from Surat to Ahmedabad the petitioner was working on the post of Senior Watchman which is a post carrying higher pay scale than the post of watchman. He was the senior most watchman at Surat at the relevant time. What he has further contended that on taking off his seniority on the basis of his original appointment by now he could have been promoted to the post of Naik in case he would not have come to Ahmedabad.

3. In the year 1988 the Government had taken a decision to terminate all the posts of chowkidars in the Civil Hospital, Ahmedabad as the security work was decided to be given to private agencies. As a consequence of this decision vide order dt. 20.5.88 all the chowkidars who have been working at the Civil Hospital, Ahmedabad were ordered to be transferred to various places In the aforesaid list, the petitioner's name stands at Sr.No.22 and he was ordered to be transferred to SSG Hospital, Baroda. Thereafter, vide order dt. 30.7.88 certain changes were made in the earlier order referred to above and the petitioner was ordered to be sent to the Civil Hospital, Surat as chowkidar instead of SSG Hospital, Baroda. Copy of this order has been produced at Annexure.D to the petition. While issuing Rule in

this petition on 26.12.1988, no interim relief was granted. No reply has been filed by the respondents to the writ petition till now. Mr. P.B.Majmudar learned counsel appearing for the petitioner argued that as far as the order of transfer of the petitioner to Surat is concerned, it may not be interfered by this court but the petitioner cannot be deprived of his seniority. Mr. Majmudar contended that the petitioner has given up his claim of seniority as he requested for his transfer to Ahmedabad. But now for administrative reasons, the petitioner has been sent back to Surat, he is entitled for the restitution of his original seniority there and other consequential benefits. Mr. Majmudar further contended that by treating the petitioner as an appointee of the year 1957, he should be given all the benefits of promotion . It has lastly been contended by the learned counsel for the petitioner that in case the petitioner's claim for his original seniority is not accepted, then the petitioner will be absorbed elsewhere at Ahmedabad rather than sending him to Surat. On the other hand the learned counsel for the respondent no.1 contended that once the petitioner voluntarily given up his seniority to take the benefit of his transfer from Surat , then he gives up his seniority once for all. In the case of the transfer of the petitioner on administrative exigency, it has arisen at Ahmedabad he has been sent back to Surat and therefore, he cannot be given seniority above the persons who are already there. It is the petitioner's own voluntary action and not any action of the respondent by which he has been deprived of the seniority. So far as the absorption of the petitioner at Ahmedabad is concerned, the learned counsel for the respondent no.1 submits that the petitioner has no right much less any legal right of absorption at Ahmedabad. The petitioner's services are transferable and as such the respondents were within their competence to transfer the petitioner. I have given anxious thought to the rival contentions of the learned counsel for the parties. So far as the claim of the petitioner of his absorption at Ahmedabad itself, I do not find any merits therein. The petitioner's services are transferable and once the respondents have taken a decision to transfer all the chokidars working at the Civil Hospital, Ahmedabad to other places and to give the security work to private agency and admittedly the services of the petitioner are transferable no wrong much less any illegality has been committed by the respondent in transferring him to Surat. The petitioner has no legal right of his absorption elsewhere at Ahmedabad as well as to continue at Ahmedabad. It is not a solitary case of the petitioner but all the chokidars have been transferred and in view of this fact it is not a case where the posts have been abolished and work is not available in the department to be given to the petitioner. The question of absorption may arise in the case of surplus staff in the department and not otherwise. May be the respondents decided to take out all the chokidars from the civil hsopital, Ahmedabad but

if is not a case of the petitioner becoming a surplus employee. The petitioner has been ordered to be adjusted in the department itself though at different places. So the grievance made in this respect is not tenable.

4. So far as the other grievance of the petitioner that the respondents be directed to restore him his original seniority, I find sufficient merits therein. The petitioner has sacrificed his seniority as he wanted to come to Ahmedabad. It was his own request transfer and at that time it was understandable that he was to be put at the bottom of the seniority list. But transfer from Ahmedabad to Surat is not made at his own request. It is a transfer which was made on administrative reasons. The petitioner has been sent back to Surat by the respondents for their own administrative reasons, certainly the petitioner can legitimately claim for restoration of his seniority and all other benefits. The petitioner is a low paid employee and he cannot be put to double loss. The benefit which has been given to him conditionally has been taken away by the respondent for their own reasons. Once that benefit has been taken away I do not find any justification in the contention of the learned counsel for the respondent that the condition subject to which benefit was given to the petitioner is still has to be insisted upon. This is highly arbitrary and unjustified. The respondents cannot have both head and tail. When they have decided to transfer the petitioner back to Surat for their own administrative reasons or administrative exigencies the petitioner became entitled for the restoration of his original seniority and all consequential benefits Though the transfer order of the petitioner is held to be valid, it is directed that the petitioner shall be entitled to seniority in the cadre concerned on the basis of his initial appointment with all consequential benefit i.e. in case any person junior to him on determining the seniority inter se, derives benefits, during the interregnum period, he shall also be entitled to those benefits.

5. In the result, the petition is partly allowed. Rule is made absolute in the aforesaid terms. No order as to costs.

for correction pl.see original